

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20544**

In the Matter of the Federal-State Joint Board on Universal Service	)	
	)	CC Docket No. 96-45
	)	
RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama	)	DA 02-3181
	)	
	)	
Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama	)	DA-02-3317
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**REPLY COMMENTS OF THE ALASKA TELEPHONE ASSOCIATION**

**INTRODUCTION**

The Alaska Telephone Association (collectively "ATA")<sup>1</sup> files these reply comments in support of the application for review of the Wireline Competition Bureau decisions granting RCC Holdings, Inc. and Cellular South License, Inc. designation as eligible telecommunications carriers under 47 U.S.C. § 214(e) (collectively "the Alabama ETC Decisions").

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<sup>1</sup> The Alaska Telephone Association is a trade association comprised of rural Alaska local exchange telephone companies. Its active members are Alaska Telephone Company; Arctic Slope Telephone Association Cooperative; Bristol Bay Telephone Cooperative, Inc.; Bush-Tell, Inc.; Copper Valley Telephone Cooperative, Inc.; Cordova Telephone Cooperative; KPU Telecommunications; Matanuska Telephone Association; Nushagak Electric & Telephone Cooperative, Inc.; OTZ Telephone Cooperative; Summit Telephone Company, Inc., TelAlaska, Inc.; United Utilities, Inc.; and Yukon Telephone Company, Inc.

A review of the initial comments shows a groundswell of support in favor of reconsideration of the Alabama ETC Decisions. The diverse origin of these comments, from states across the lower-48 and Alaska, confirms that the Alabama ETC Decisions present issues of national significance and concern. Comments highlight deficiencies in the Wireline Competition Bureau's analysis, including, among other things, its failure to adequately consider (i) the applicant's ability to provide supported services (without, for example, unacceptable gaps), (ii) the true costs of designating a new ETC in the relevant areas, (iii) whether the benefits predicted by applicants would actually be realized, and (iv) the impact of its decision on the stability and viability of the universal service fund. With near unanimity, commentators agree that the Wireline Competition Bureau erred in its analysis (or lack thereof) of the "public interest" and ask the Commission to enforce upon reconsideration the statutorily mandated "public interest" inquiry under § 214(e). Reconsideration will correct the Alabama ETC Decisions and provide helpful guidance to state commissions currently facing ETC designation decisions and grappling with the scope of the "public interest" inquiry.

Those opposing reconsideration are few, including predictably the applicants RCC Holdings, Inc. and Cellular South Licenses, Inc.,<sup>2</sup> as well as one additional commentator, Dobson Communications Corporation (collectively the "Opponents"). Opponents attempt to justify the Wireline Competition Bureau's decision to largely ignore the public interest considerations under § 214(e). Specifically, Opponents argue that new ETC

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<sup>2</sup> The applicants' oppositions were filed on January 7, 2003 (RCC Holdings, Inc.) and January 14, 2003 (Cellular South Licenses, Inc.). The Public Notice establishing the current comment period was released on January 10, 2003.



designations in rural areas can be presumed to increase beneficial competition which is always in the public interest and that any attempt to soberly reconsider this analysis, or to wait for the Joint Board to complete its review of the ETC designation policy, would be anticompetitive. As discussed further below, these arguments are incorrect and should not be persuasive here.

### **REPLY COMMENTS**

#### **A. FCC has the authority to reconsider its current position and proceed with as much caution as is warranted with future ETC designations**

Opponents invite the Commission to accept the Wireline Competition Bureau's analysis without further public interest consideration, and to continue to "rubber stamp" ETC designations, with no acknowledgement of the current context of the Commission's ETC policy. Opponents argue that the Commission should not "prejudge" the Joint Board's conclusions, or wait for its recommendations, within the context of the current docket nor with respect to future ETC petitions. Dobson Communications Corporation goes so far as to assert that it would be "illegal" for the Commission to do so. This is clearly incorrect.

As an initial matter, the Commission has the authority to reconsider its own decisions and those decisions delegated to the Wireline Competition Bureau. Opponents do not argue otherwise, nor could they. The rules establish no specific timeline for this

reconsideration analysis, and do not limit the ability of the Commission to consider relevant matters, even if those matters are concurrently being considered elsewhere.<sup>3</sup>

The Commission has recognized that the current universal service rules may need to be revamped to protect the stability of the universal service fund and has also acknowledged that it may make sense to establish guidelines for processing ETC applications.<sup>4</sup> The Commission referred these issues, among others, to the Joint Board.<sup>5</sup> The referral, however, does not mean that the Commission must ignore these issues to the extent they are relevant to the instant case. The reconsideration of the Alabama ETC Decisions demands, among other things, a resolution of the appropriate scope of the “public interest” inquiry and the Commission can resolve the current uncertainty by establishing guidelines and clarifying the appropriate cost-benefit analysis that must underlie the inquiry.

If the Commission would prefer to wait for the Joint Board recommendation, it can do so. Opponents argue that consumers would be harmed by the loss of beneficial competition if the Commission does not affirm the Alabama ETC Decisions right now. But this “harm” analysis rests on inappropriate presumptions regarding subsidized competition in rural areas and on a claim of potential benefits that are unproven (*see*

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<sup>3</sup> *See, generally.*, 47 C.F.R. § 1.115(h) (“If the Commission grants the application for review . . . it may . . . [o]rder such other proceedings . . . as may be necessary . . . [and] it may stay the effect of the order from which review is sought.”)

<sup>4</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 02-307, rel. November 8, 2002.

<sup>5</sup> *Id.*



Sections B and C below) and that, in any event, have not been subjected to the requisite cost-benefit analysis (explained in detail in ATA's initial comments at pp. 14-16, and summarized at Section C below). The Alabama ETC Decisions require reconsideration and there is simply no reason to rush to an ill-considered determination.

Dobson Communications Corporation also argues that reconsideration would be unfair, particularly if the Commission waits to do so until after the Joint Board makes its recommendations, since the ETC designation process is already a "time-consuming, costly, and often difficult process."<sup>6</sup> This is a curious argument, since Opponents also claim that ETC designation is really a self-certification process, which (by brushing aside the appropriate public interest inquiry) is far from burdensome. In any event, the "fairness" argument is not persuasive here. The universal service system was not established to protect competing carriers.<sup>7</sup> Likewise, the ETC process is not meant to be a burdenless formality whereby new entrants can tap the universal service fund as a surrogate source of venture capital. On the contrary, the universal service system was established to ensure affordable access to basic telecommunication services for all consumers. Reconsideration of the Alabama ETC Decisions to enforce the appropriate public interest analysis is consistent with this true universal service goal and will serve to protect rural consumers both in Alabama and, by the impact of this precedent, nationwide.

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<sup>6</sup> Dobson Communications Corporation Comments, p. 5.

<sup>7</sup> *Alenco Communications, Inc., et al. v. F.C.C.*, 201 F.3d 608, 621 (5<sup>th</sup> Cir. 2000) ("The purpose of universal service is to benefit the customer, not the carrier.") (footnotes omitted)

**B. The universal service system is not a barrier to beneficial competition**

Opponents argue that the universal service system was anticompetitive prior to 1996 and may remain so even today to the extent that the ETC designation process places a burden on new entrants. This argument is inaccurate and, in any case, misses the point. The paramount purpose of the Commission and the Telecommunications Act is “to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and communications service with adequate facilities at reasonable charges.” *47 U.S.C. § 151*. Competition may help advance this goal in some circumstances, but in others may do violence to it. Opponents single-mindedly press the tenet of competition without regard to the overarching purpose of the Act, and this narrow “means-over-ends” focus risks harming consumers.

It is uncontested that the Telecommunication Act of 1996 (the “Act”) established dual goals of promoting competition and ensuring universal service. As explained above, these goals are both premised on ultimate benefits to all consumers. Under some circumstances, increased competition may lead to consumer benefits. However, Congress realized that this is not always the case – as exemplified by the Act’s different treatment of rural areas and rural carriers. A rural telephone company is not subject to the interconnection provisions of § 251(c) until the state commission determines that it “is not unduly economically burdensome, is technically feasible, and is consistent with section 254 [the Universal Service Principles].” *47 U.S.C. § 251(f)(1)*. Likewise, the Commission (or a state commission) need not designate a new ETC entrant in a rural



study area, and indeed cannot, unless and until it is determined that such designation is in the public interest. 47 U.S.C. § 214(e)(2), (6).

Subsidized competition in rural areas may actually harm consumers by, among other things, providing disincentives to the build-out of costly facilities or deployment of advanced services to remote areas, decreasing service quality if the incumbent exits the rural study area,<sup>8</sup> or undermining the viability of the universal service fund. (These detriments and others are discussed in more detail in ATA's initial comments at pp. 12-13.)

Blind promotion of subsidized competition also ignores the reality that wireless providers are already competing in rural service areas without universal service support.<sup>9</sup> This fact has been presented by several commentators who provided specific state examples, and it is true in Alaska as well. For example, in one Alaska rural study area, there are three wireless carriers currently providing service in competition with each other and the incumbent, Matanuska Telephone Association, Inc. None of these three wireless carriers receive universal service support. If one of the three seeks and obtains

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<sup>8</sup> A recent independent survey by consumer reports found wireless customers are increasingly frustrated with poor service quality from their wireless providers, including the difficulty of completing E911 calls. *See Will your cell phone reach 911? (You can't be sure. Our research produced disturbing results)*, Consumer Reports, February 2003, at 12; *see also, Three steps to better cellular: (1) Choose your cellular service*, Consumer Reports, February 2003, at 15.

<sup>9</sup> The Commission has recently solicited comments on the extent to which wireless carriers are actually competing in rural areas, recognizing that much of the information that it has on the state of competition in rural areas is incomplete. *See In the Matter of Facilitating the Provision of Spectrum-based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-based Services*, WT Docket No. 02-381, FCC 02-325, rel. December 20, 2002, ¶¶ 11-12; *In the Matter of the Implementation of Section 6002(B) of the Omnibus Reconciliation Act of 1993*, WT Docket No. 02-379, FCC 02-327, rel. December 13, 2002, ¶¶ 38-39.

ETC designation with the attendant universal service funding, it is likely (if not certain) that the remaining wireless carriers would also seek that designation and source of funds. The result would be three wireless carriers receiving high-cost support to participate in subsidized competition when they have already demonstrated they can compete in an unsubsidized manner. This is a wasteful and unintended use of universal service funds - spending ever increasing sums to subsidize competition that already exists: All cost, no benefit!

In sum, the “public interest” inquiry manifests the realization of Congress that not all competition is beneficial and that “competition for the sake of competition” may undermine the principles of universal service and harm consumers in rural areas. In the Alabama ETC Decisions, the Wireline Competition Bureau erred by presuming that designating new ETCs inevitably leads to beneficial competition. Opponents make the same error in their comments, by presuming that “consumer benefit” always equates with “the encouragement of competition” in rural regions. This presumption is incorrect, and, if not reconsidered, renders the public interest inquiry superfluous.

**C. The public interest inquiry requires a “hard look” and a cost-benefit analysis**

Opponents again rely on generalized assertions with regard to the purported “benefits of competition” – the deployment of new technologies, innovative services and pricing plans, and increased service quality and choice – to support the notion that a new ETC in a rural area must be in the public interest. These statements cannot form the basis of a public interest inquiry.



First, the purported “benefits” are completely generic. They represent the ideal of what competition at its best may provide. But the repeated recitation of these “benefits” does not (and cannot) replace a demonstration of what actual benefits will occur in a specific area. Affirmative, case-specific evidence is required. Rural ETC designations, just like other rural regulations, do not lend themselves to generalizations. Rural populations present unique challenges to the build-out and maintenance of a high-quality telephone network. Rural carriers face higher costs and different revenue streams and calling patterns than non-rural carriers. And rural carriers themselves differ greatly as a group.<sup>10</sup>

Second, a list of potential benefits alone is not sufficient to resolve whether ETC designation is in the public interest. These benefits must be weighed against likely harms, again based on specific evidence. This cost-benefit analysis forms the essence of any public interest inquiry.

Alaska has already had an experience in the ETC context that underscores the need to apply a “hard look” as opposed to a “rubber stamp” when examining an ETC application. The first wireless carrier to seek ETC status in a rural study area in Alaska argued that it met the requirements of § 214(e), that it would provide service to unserved and underserved areas and customers, and that its designation as an ETC would also benefit the public interest since it would introduce competition, service options and advanced services to rural customers. Like RCC Holdings and Cellular South, the

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<sup>10</sup> See, generally, Rural Task Force, White Paper No. 2, *The Rural Difference*, January 2000, available on the Internet at <http://www.wutc.wa.gov/rtf>.

company hoped to rely largely on its own self-certification with regard to the potential benefits of competition. Had the Regulatory Commission of Alaska (“RCA”) agreed with petitioner, the ETC application would have been approved without an evidentiary hearing or detailed analysis.

Parties responding to the company’s ETC application, however, argued that a hearing should be held and a factual record developed on the wireless company’s ability and intent to provide the required supported services and whether its designation would be in the public interest. In the face of these conflicting viewpoints, the RCA invited comment on the scope of issues that should be considered. While this process unfolded, the wireless company withdrew its petition, and ultimately, surrendered its certificate of public convenience and necessity to provide telephone service in the state of Alaska on the grounds that its parent company was “no longer able to honor its prior commitment to provide the financial resources necessary to become a local exchange carrier.”<sup>11</sup>

This situation demonstrates that the federally mandated considerations set forth at 47 U.S.C. § 214(e) require a level of scrutiny beyond mere self-certification. Had the RCA relied on the wireless company’s assertions without an actual cost-benefit inquiry (as the Wireline Competition Bureau has chosen to do in the Alabama ETC Decisions), the first wireless carrier to receive ETC status in a rural Alaska study area would have

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<sup>11</sup> See AP&T Wireless, Notice of Significant Change in Information and Relinquishment of Certificate of Public Convenience and Necessity, RCA Docket No. U-01-109, submitted November 4, 2002, p. 1. In explaining to the RCA the circumstances that caused the withdrawal of financial support for the CETC venture, the applicant noted that unregulated subsidiaries of the corporate parent “outside the scope of the Commission’s regulatory jurisdiction” compromised its ability to honor its commitment. *Id.* at 3.



been unprepared to provide telecommunications service at all, let alone provide it ubiquitously – with increased service options and advanced services – to rural customers located in remote locales.

The Commission should reconsider and correct the Alabama ETC Decisions and perform the cost-benefit analysis required to support a public interest determination: Examining actual benefits, determining whether these benefits outweigh the costs of supporting multiple networks and duplicative services and the threat of other consumer harms, and determining whether the designation itself will pose an unacceptable risk to the viability of the universal service fund to the detriment of all consumers.

### CONCLUSION

For all of the foregoing reasons, the Commission should grant the Alabama Rural LECs petition to reconsider the Alabama ETC Decisions.

Dated this 25<sup>th</sup> day of February, 2003.

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